

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

SHAWN CUNNIGAN,

:

Petitioner,

Case No. 3:07-cv-368

:

-vs-

District Judge Thomas M. Rose

Chief Magistrate Judge Michael R. Merz

MICHAEL SHEETS, Warden,

:

Respondent.

TRANSFER ORDER

This habeas corpus case is before the Court for initial review under Rule 4 of the Rules Governing § 2254 Cases.

Upon initial review, the Court finds that Petitioner previously filed a Petition for Writ of Habeas Corpus challenging the same conviction which he challenges in the instant Petition. In *Cunnigan v. Hurley*, Case No. 3:02-cv-003, he sought relief from the same eighteen year sentence he is presently serving for drug trafficking. This Court dismissed the Petition with prejudice and was affirmed on direct appeal by the Sixth Circuit on March 17, 2004. *Cunnigan v. Hurley*, Case No. 03-3284 (unreported).

28 U.S.C. § 2244 as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No 104-132, 110 Stat. 1214)(the “AEDPA”) prohibits the filing of a second or successive habeas corpus petition without the prior permission of the Court of Appeals. Indeed, a district court lacks jurisdiction to consider a second or successive petition without approval by the circuit court.

Burton v. Stewart, 549 U.S. ___, 127 S.Ct. 793, 166 L. Ed. 2d 628 (2007).

In *In re Sims*, 111 F.3d 45 (6th Cir. 1997), the Court of Appeals was faced with the question what a district court should do when a habeas petitioner seeks permission to file a second or successive petition, but improperly seeks permission from the district court. It answered by following the Second Circuit's decision in *Liriano v. United States*, 95 F.3d 119 (2nd Cir. 1996), that such a motion should be transferred to the Court of Appeals under 28 U.S.C. §1631.

Since Petitioner has presented no proof that the Sixth Circuit has approved filing this Petition, the Clerk is ordered to transfer the case to the Court of Appeals pursuant to 28 U.S.C. § 1631.

October 2, 2007.

s/ **Michael R. Merz**
Chief United States Magistrate Judge